(b)

	Full Bench	Division Bench
A. S.	63	60
S. A.	4	162
C. M. A.	20	21
C. R. P.	8	110
Cr. Apps.	12	28
Cr. Revns.		11

(Rest by single bench)

(c) Rao Bahadur P. Neelakanta Menon, Cheif Justice 158
Justice Rao Bahadur T. S. Narayana Ayyar 224
Justice Thomas Manjuran 181

(d) 110.

HABEAS CORPUS—CHOWWARA PARAMESWARA MENON—APPLICATION BY

156. Mr. V. K. Bhaskara Menon *(Cranganur)*: Will Government be pleased to state whether one Chowwara Parameswaran had applied from Jail to move the High Court for the issue of a writ of Habeas Corpus and if the answer is in the affirmative will Government kindly state when the application was received and what action was taken in the matter?

Mr. M. Sivarama Menon *(Advocate-General)*: Yes, on 18th September 1942. The petition was forwarded to the High Court.

Mr. V. K. Bhaskara Menon *(Cranganur)*: What exactly was the date of the petition?

Mr. M. Sivarama Menon *(Advocate-General)*: 7th September 1942.

Mr. V. K. Bhaskara Menon *(Cranganur)*: The date on which it was despatched from jail to the Government.

Mr. M. Sivarama Menon *(Advocate-General)*: It was forwarded to the Secretary on 16th September 1942.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I take it that a petition to the Government presented by a party was belated in the jail for nearly 11 days.

Mr. M. Sivarama Menon *(Advocate-General)*: There was no provision in the jail rules authorising the Superintendent to forward a petition. Some time was taken by him to decide what he should do with the petition.

Mr. V. K. Bhaskara Menon *(Cranganur)*: Then why exactly was it forwarded?

Mr. M. Sivarama Menon *(Advocate-General)*: He took instructions from the Inspector-General of Prisons and he forwarded it in accordance with the directions of the Inspector-General.

Mr. V. K. Bhaskara Menon *(Cranganur)*: Under which law can the Inspector-General forward it to the Secretary.

Mr. M. Sivarama Menon *(Advocate-General)*: There is no provision in the jail rules and therefore this matter was brought to the notice of the Government.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I know when exactly it was brought to the notice of the Government by the Inspector-General of Prisons.

Mr. M. Sivarama Menon *(Advocate-General)*: That is on 16th September 1942. The Jail Superintendent cannot have direct communication with the Government.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I know when this was brought to the notice of the Inspector-General of Prisons?

Mr. M. Sivarama Menon *(Advocate-General)*: Notice.

Mr. V. K. Bhaskara Menon *(Cranganur)*: When exactly this petition was forwarded to the High Court.

Mr. M. Sivarama Menon *(Advocate-General)*: On 1st April 1943.

Mr. V. K. Bhaskara Menon *(Cranganur)*: What was being done with this petition during this period of 7 months?

Mr. M. Sivarama Menon *(Advocate-General)*: The question was being considered as to whether an accused person can put in a petition of this nature. He was charge-sheeted within 27 days of the receipt of this petition. When he again pressed the petition, it was forwarded to the High Court. He was an undertrial prisoner and there was no necessity, as a matter of fact, to enquire into this matter.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I know whether it is the view of the Government that where the High Court can issue a writ of habeas corpus the Government can *suo moto* decide that it is a case in which the writ should not be issued?

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Mr. M. Sivarama Menon *(Advocate-General)*: There is no provision in the law of the land under which the High Court can issue a habeas corpus writ.

Mr. V. K. Bhaskara Menon *(Cranganur)*: Is it the view of the Government that our High Court does not possess powers possessed by other High Courts?

Mr. M. Sivarama Menon *(Advocate-General)*: Yes.

Mr. A. B. Salem *(Mattancheri)*: May I know whether the Government are aware of the fact that habeas corpus have been exercised by the Chief Court, the predecessor of the present High Court?

Mr. M. Sivarama Menon *(Advocate-General)*: I am not aware.

Mr. A. B. Salem *(Mattancheri)*: May I know whether the High Court here is similar to a King's Court?

Mr. M. Sivarama Menon *(Advocate-General)*: It has got only the powers which have been actually delegated to it by the Government of Cochin Act.

Mr. A. B. Salem *(Mattancheri)*: There was a വലിയ കൊട്ട. That was the first court established here. That was a King's Court.

Mr. M. Sivarama Menon *(Advocate-General)*: The High Court has been constituted by the Maharaja, and certain powers have been delegated.

Mr. A. B. Salem *(Mattancheri)*: May I know whether any power was reserved?

Mr. M. Sivarama Menon *(Advocate-General)*: It is not a question of reservation. The High Court possesses only powers which have been actually delegated to it by law. In a small State like Cochin it is very easy for the Ruler to enquire why a subject has been kept in detention. That is the reason why Section 491 of the British Indian Criminal Procedure Code has been delibarately omitted from the Cochin Criminal Procedure Code.

Mr. A. B. Salem *(Mattancheri)*: Which is the forum on which the habeas corpus jurisdiction is invoked.

Mr. M. Sivarama Menon *(Advocate-General)*: The High Court need not exercise that in a small State like Cochin. That power could be effectively exercised by the executive.

Mr. A. B. Salem *(Mattancheri)*: In delegating jurisdiction to the Highest Judiciary in the land has there been any reservation of any jurisdiction.

Mr. M. Sivarama Menon *(Advocate-General)*: Every power that is not specifically conferred is reserved.

Mr. President: Although I do not claim to be a legal luminary I think the point is this. The High Court has been delegated powers which it would exercise under the ordinary law. Writs of Mendamus and Habeas Corpus are outside the ordinary law and specially confined to Special Acts coming direct from the King. Some of these powers have not been delegated. Only three High Courts in the whole of India have this power and those three High Courts have exercised this jurisdiction. Those ancient High Courts are Madras, Bombay and Calcutta. There are certain extraordinary powers but the other High Courts have not been vested with such powers for one reason or other.

Mr. A. B. Salem *(Mattancheri)*: What I am saying is this. In British India there is a still higher court. Here there is no higher court and there was absolutely no reservation of any jurisdiction. There must be some place where these rights of the people could be invoked. Is it the case of the Government that there is no forum here?

Mr. M. Sivarama Menon *(Advocate-General)*: Government is the forum.

Mr. A. B. Salem *(Mattancheri)*: Does the Government exercise any judicial function?

Mr. M. Sivarama Menon *(Advocate-General)*: It is not a judicial function.

Mr. A. B. Salem *(Mattancheri)*: Certainly it is a judicial function. It is a common law right.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I know why exactly this application was forwarded to the High Court if the Government realised that it was not necessary.

Mr. M. Sivarama Menon *(Advocate-General)*: Because the petitioner insisted that his petition should be forwarded to the High Court though he was charged before the Magistrate with a specific offence.

Mr. A. B. Salem *(Mattancheri)*: The application for issue of a writ of habeas corpus can be put in only before the High Court. The Government cannot let a man, who has been lawfully arrested go, from arrest. May I know why the habeas corpus petition was received by the Government?

Mr. M. Sivarama Menon *(Advocate-General)*: It was submitted by the prisoner to the Jail Superintendent.

Mr. A. B. Salem *(Mattancheri)*: If a prisoner submits some petition will it be forwarded to the Government?

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Mr. M. Sivarama Menon *(Advocate-General):* If the Jail Superintendent refused to receive it he would have been quite in order so long as section 491 of the Indian Code of Criminal Procedure stands omitted in our Code.

Mr. V. K. Bhaskara Menon *(Cranganur):* May I know the date on which the petitioner insisted that it should be forwarded to the High Court.

Mr. M. Sivarama Menon *(Advocate-General):* After 20—1—43.

Mr. A. B. Salem *(Mattancheri):* May I know the reason for this extraordinary delay of 7 months.

Mr. M. Sivarama Menon *(Advocate-General):* The prisoner was charged before the Magistrate in the meanwhile.

Mr. A. B. Salem *(Mattancheri):* Sir, when you are dealing with the liberties of a man there should not be any delay.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* What is the date of the F. I. R.

Mr. M. Sivarama Menon *(Advocate-General):* 5—10—42.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Will it correspond to 12—8—18.

Mr. M. Sivarama Menon *(Advocate-General):* I can't say, Sir.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* What is this, Sir. These dates are not helpful. You begin with English dates and then come to the Malayalam dates.

The petition of habeus corpus had been submitted to the proper authorities by the prisoner on the 7th of September. We find that after some correspondence due to difference of opinion about the rules, the petition goes to the High Court only after about 7 months—from 7th of September to 1st of April.

Khan Sahib Y. Muhammad Roshan Sahib Bahadur *(Commissioner of Police):* The actual position was this: that habeus corpus petition was for release from detention; he was actually released from detention and he was sent for remand under the common law for trial. He was not under detention from which he wanted release. So the High Court had no case for habeus corpus. He was an ordinary under-trial prisoner and so habeus corpus did not arise.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Thank you for your kind intervention. May I know whether by the time the petition was forwarded to the High Court, the prisoner had not been convicted for the charge?

Khan Sahib Y. Muhammad Roshan Sahib Bahadur *(Commissioner of Police):* I want notice.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* It has been stated that he was charged on a particular date, arrested on a particular date, may I know when he was convicted?

Mr. M. Sivarama Menon *(Advocate-General):* I know that when the habeus corpus petition was being considered by the High Court, he had been convicted. I don't know the date of actual conviction.

Mr. A. B. Salem *(Mattancheri):* With reference to the habeus corpus petition, who is to decide whether it should be forwarded or not forwarded? What was the question to be considered?

Mr. M. Sivarama Menon *(Advocate-General):* It is for the Government to decide as no power to issue a writ of Habeus Corpus has been conferred on the High Court.

Mr. A. B. Salem *(Mattancheri):* When the Government is exercising an executive function Government is not to decide whether petition will lie or whether it will not lie. These are judicial questions which the Judges will decide. Is it for the Government to decide.

Mr. M. Sivarama Menon *(Advocate-General):* This was a novel question as far as the State was concerned.

Mr. A. B. Salem *(Mattancheri):* Is it right for the Government to decide whether the High Court has got the power? That is what we want to know.

Mr. M. Sivarama Menon *(Advocate-General):* The Chief Court has decided in 17 Cochin that there is no power to issue a writ of mandanus. The writ of Habeus Corpus is on the same footing.

Mr. A. B. Salem *(Mattancheri):* Is it the judiciary or the executive that has got the right to decide?

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Mr. M. Sivarama Menon *(Advocate-General):* The Judiciary decided the question first in 17 Cochin.

Mr. A. B. Salem *(Mattancheri):* I ask you, who has got the right to decide? Is it for the executive or for the judiciary?

Mr. V. K. Bhaskara Menon *(Cranganur):* Can he present a petition direct?

Mr. M. Sivarama Menon *(Advocate-General):* He has to present the petition to the Jail Superintendent.

Mr. V. K. Bhaskara Menon *(Cranganur):* Can he send it directly to the High Court without the intervention of the Jail Superintendent?

Mr. M. Sivarama Menon *(Advocate-General):* He can engage a counsel and every facility will be given to the counsel.

Mr. V. K. Bhaskara Menon *(Cranganur):* I want to know whether a person detained in jail can send up a petition or anything without the intervention of the Jail Superintendent?

Mr. M. Sivarama Menon *(Advocate-General):* He can send it through an agent advocate.

Mr. V. K. Bhaskara Menon *(Cranganur):* Suppose he has not got the money to engage an advocate, can he send it direct? Is there any provision in the rules?

Mr. M. Sivarama Menon *(Advocate-General):* No. There is no provision in the Jail rules.

Mr. A. B. Salem *(Mattancheri):* Can a man in jail post a letter direct without the intervention of the Jail Superintendent?

Mr. M. Sivarama Menon *(Advocate-General):* I said nothing about posting of letters.

Mr. A. B. Salem *(Mattancheri):* He cannot send anything without the Jail Superintendent.

Mr. M. Sivarama Menon *(Advocate-General):* Permission will be given when a man wants legal advice.

Mr. V. K. Bhaskara Menon *(Cranganur):* In any event, permission for seeking legal advice is no answer to my question.

Mr. M. Sivarama Menon *(Advocate-General):* I never said permission is not required, and that he can send it direct. There are rules to guide the officers in such matters.

Mr. V. K. Bhaskara Menon *(Cranganur):* May I know whether without the intervention of the Jail Superintendent, a prisoner can get legal advice?

Mr. M. Sivarama Menon *(Advocate-General):* Without permission, he cannot.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Are we to take it that the position of the Government is that he has no remedy?

Mr. M. Sivarama Menon *(Advocate-General):* No.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I further enquire whether the Government will be pleased to consider the question of making necessary rules in the existing jail rules to safeguard the liberty of the people of the State.

Mr. M. Sivarama Menon *(Advocate-General):* It is based on the assumption that the habeus corpus law is applicable here, which fact has not been conceded by the Government.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Do the Government of Cochin say that our Hon'ble High Court has not got the power to issue a writ of habeus corpus?

Mr. M. Sivarama Menon *(Advocate-General):* That is exactly the position. Such a power has not been delegated.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Is it the intention of the executive of the State to say that the highest judicial tribunal in the State has not got the power to issue a writ of habeus corpus, or leave it for the High Court to say whether they possess such powers or do not possess such powers. Let us know where we stand.

Mr. M. Sivarama Menon *(Advocate-General):* In the absence of provision corresponding to section 491 of the Indian Criminal Procedure Code in the Cochin Criminal Procedure Code, Government assumed the position, rightly according to Government, that the High Court has not the power of issuing a writ of habeus corpus in the light of the ruling of the Chief Court in 17 Cochin.

Mr. A. B. Salem *(Mattancheri):* Is the Hon'ble Government Advocate aware of the fact that powers of habeus corpus were being exercised by the High Courts of Madras, Bombay and Calcutta?

Mr. M. Sivarama Menon *(Advocate-General):* Yes.

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Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Don't take shelter under such excuses. The Hon'ble Law Member was taking shelter under the fact that our Criminal Procedure Code does not contain provision similar to section 491 of the Criminal Procedure Code of British India and hence the position of the executive Government of Cochin, that our High Court has not got the power. Very good. May I further enquire whether the last amendment of the Criminal Procedure was not made prior to the constitution of our present High Court.

Mr. M. Sivarama Menon *(Advocate-General):* Yes. The Code was amended when it was the Chief Court.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Will the House be right in thinking that when the Criminal Procedure Code was amended last, ours was only a Chief Court.

Mr. M. Sivarama Menon *(Advocate-General):* Yes.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* The High Court was constituted in 1113 Mithunam. Have you ever thought of amending the existing Criminal Procedure Code according to the British Indian Procedure Code, incorporating section 491, thereby recognising the status of our High Court.

Mr. M. Sivarama Menon *(Advocate-General):* Even at the time of the revision of the Criminal Procedure Code, the question was considered whether section 491 was necessary, and it was thought it was not necessary.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I know, Sir, now that the Chief Court has been raised to a High Court, whether it is not necessary to further amend the Procedure Code.

Mr. A. V. Moothedan *(Chalakkudi):* Sir, we have already gone 10 minutes after the question time and there are many Bills to be gone through.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Is it the position of the Government that these powers need not be possessed by the Hon'ble High Court.

Mr. President: Non-official bills shall be taken up now.

At this stage, the President left the Chair and the Deputy President presided.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I know, Sir.....

Deputy President: The question time is over.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I point out, Sir, that there is a precedent that when a question is being tackled, even if the time for the question is over, it can be finished.

Deputy President: I can't extend the time now. The Diwan President before leaving had already said that non-official bills would be taken up for discussion.

ARABIC LECTURER

*157. **Mr. C. V. Iyyu** *(Kunnamkulam):* Will Government be pleased to state.—

(*a*) whether they have noted the last article on the last page of the Malabar Mail dated 18th June 1943 under the caption in Malayalam "Arabic Pandit affair";

(*b*) if so, whether Government has noted the hardship of the Muslims who have passed S.S.L.C. or even Intermediate in continuing the study of that language;

(*c*) have Government or the Director of Public Instruction received any representation from the leading Muslims in the State in connection with the appointment of an Arabic Lecturer?

Rao Sahib I. N. Menon *(Director of Public Instruction):*

(*a*) Yes.

(*b*) Yes.

(*c*) Yes.

TAMIL AS 2ND LANGUAGE IN THE MAHARAJA'S COLLEGE

158. **Mr. T. S. Ramachandra Ayyar** *(Chittur-Tattamangalam):* Will Government be pleased to state.—

(*a*) are there facilities of study in the Maharaja's College for students wishing to take up Tamil as their II language in the Intermediate and B.A.;

(*b*) if not why not;

*Questions Nos. 157—193.—Answers to these questions were printed and placed on the tablet but supplementaries were not allowed to be put, since the question time was over.

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